THE UNITED STATES vs. 422 CASKS OF WINE, HAZARD & WILLIAMS CLAIMANTS.

It is not the habit of this Court, to consider points again open for discussion, which have been once deliberately decided, and have furnished the ground work of the judgment already rendered in the same cause, in a former stage of its proceedings. {549}

In suits *in rem*, and in the exchequer side of the District Courts of the United States, the claimant is an actor, and is entitled to come before the Court in that character only, in virtue of his proprietary interest in the thing in controversy. This alone gives him a *persona standi in judicio*. It is necessary that he should establish his right to that character, as a preliminary to his admission as a party *ad litem*, capable of sustaining the litigation. {549}

If the claim be made through an agent, the agent must make oath as to his belief of the verity of the claim, and if necessary produce proof of his authority, before he can be admitted to put in the claim. {549}

Allegations and pleadings to the merits are a waiver of the preliminary inquiry as to proprietary interest; and admission that the party is rightly in Court and capable of contesting the merits. {550}

If after proceeding in a cause the Court find the claimant has no property, or that it is in another not represented, the Court will retain the *res*, until the real owner shall appear, claim and receive it from the Court. {550}

Upon a writ of error in an exchequer proceeding, which has been tried by a jury, the evidence given at the time of the trial is not in a strict sense before this Court. {550}

ERROR to the District Court of E. Louisiana.

This case was before this Court, at February Term 1823, and is reported in 8 *Wheat.* 391, under the name of the Sarah. The cause having been sent back, the libel was changed into an information, charging the seizure to have been made on land, according to the leave given by the decree of the Court in that case.

The information charges the wine to have been in reality Malaga wine, falsely exported from New-York under the name of Sherry, for the benefit of the drawback. To this information, a claim and answer was given and filed by Benjamin Story, as agent for Hazard & Williams, and on the oath of the said Story, claiming the wine as the property of the said Hazard & Williams, making no answer to the specific fact charged by the information, that the wine was Malaga wine, exported under the name of Sherry for the benefit of drawback; but denying generally the allegations of the information, or that any thing had been done to forfeit the wine under the revenue laws of the United States, and claiming the restoration of the wine to Hazard & Williams. The record set forth the evidence on the

question, whether the wines were Malaga or Sherry. The verdict of the jury was for the claimants. The District Attorney moved for a new trial, which was overruled; on which he brought this writ of error, and made the following assignment of errors.

1. That on the 18th of December 1819, this case was tried by jury, and verdict and judgment rendered for the United States.

2. The proceedings under this libel were regular; as the amendment related to matter of form merely, and not of substance; and by the 17th section of the Act of Congress of 24th September 1789, the Courts of the United States may establish all necessary rules for conducting the business of the Court; and the 22d section of the same Act provides that "there shall be no reversal for error in ruling any plea in abatement," &c. The proceedings in this case, were in conformity with the rules of the Court in which they were instituted.

No answer and claim was filed and sworn to by or in the name and behalf of Charles Hall, the real owner of the said 422 casks of wine, at the time of the seizure and forfeiture thereof to the United States.

Mr. Wirt, Attorney General, on the part of the United States, submitted the case, on the errors assigned by the District Attorney.

Mr. Ogden and Mr. Hall, on the part of the claimants, made the following points:—

1. That there is no error upon the record, for the causes assigned by the Attorney for the United States; the same points having been already before this Court, and after due consideration, conclusively settled, upon the first trial of this cause. (See 8 *Wheat.* 391. "The Sarah.")

2. That there was no necessity for the said Charles Hall to file a claim and answer in *his own name*, since his title to said wine, (if proved) accrued after the seizure thereof; and after a claim and answer had been duly filed by Hazard & Williams, the parties having the *legal* title to said property.

3. That the objection "that no answer and claim hath been filed and sworn to by or in the name and behalf of Charles Hall, the real owner of said 422 casks of wine," *were it valid*, cannot *now* prevail; because the same should have been taken when the claim was filed, or at all events at the time of the trial of the cause in the Court below.

4. That from the whole record it appears, that judgment ought not to be for the United States of condemnation of said wine; but ought, of right, to be for the claimants.

5. "That from the whole of the evidence apparent upon the record, and taken for the purpose of review, &c." it is manifest that restitution of said wine ought to be decreed to the claimants.

(The United States *vs.* 422 Casks of Wine.)

Mr. Justice STORY delivered the opinion of the Court.—

This is the same cause which came before this Court at February term, 1823, and is reported in 8 *Wheat.* 391. The cause having been remanded to the District Court of Louisiana for farther proceedings, the libel or information was there amended, so as to become, technically, an exchequer information of seizure; and the parties being at issue upon the question of forfeiture, the jury returned a verdict for the claimants, upon which judgment was rendered in their favour. Upon the writ of error now brought up on this last judgment, two grounds for reversal have been asserted in the assignment of errors spread upon the record, and the Attorney General has now submitted them, after a brief exposition, to the consideration of the Court.

The first is in substance the same question which was decided by this Court, upon the former appeal, and is presented in the shape of a re-argument by the District-Attorney. Upon this it is unnecessary to say more, than that we adhere to the opinion formerly expressed, and can perceive no reason for changing it. It is not the habit of this Court to consider points again open for discussion, which have been once deliberately decided, and have furnished the ground work of the judgment already rendered in the same cause, in a former stage of its presentation here.

The second ground is, that Messrs. Hazard & Williams, in whose behalf the claim in this case was interposed, are not the real owners of the wine under seizure, but the same was owned by one Charles Hall; so that the claimants are not entitled to any judgment of restitution.

This objection is founded upon a mistaken view of the time, nature and order of the proceedings proper in suits *in rem*, whether arising on the admiralty or exchequer side of the Court. In such suits, the claimant is an actor, and is entitled to come before the Court in that character only, in virtue of his proprietary interest in the thing in controversy; this alone gives him a *persona standi in judicio.* It is necessary that he should establish his right to that character, as a preliminary to his admission as a party, *ad litem*, capable of sustaining the litigation. He is therefore, in the regular and proper course of practice, required in the first instance, to put in his claim, upon oath, averring in positive terms his proprietary interest. If he refuses so to do, it is a sufficient reason for a rejection of his claim. If the claim be made through the intervention of an agent, the agent is in like manner required to make oath to his belief of the verity of the claim; and if necessary, he may also be required to produce and prove his authority, before he

can be admitted to put in the claim. If this is not done, it furnishes matter of exception, and may be insisted upon by the adverse party, for the dismissal of the claim. If the claim be admitted upon this preliminary proof, it is still open to contestation, and, by a suitable exceptive allegation in the admiralty, or, by a correspondent plea in the nature of a plea in abatement, to the person of the claimant, in the exchequer, the facts of proprietary interest, sufficient to support the claim, may be put in contestation, and formally decided. It is in this stage of the proceedings, and in this only, that the question of the claimant's right is generally open for discussion. If the claim is admitted without objection, and allegations or pleadings to the merits are subsequently put in; it is a waiver of the preliminary inquiry, and an admission that the party is rightly in Court, and capable of contesting the merits. If indeed, it should afterwards appear, upon the trial, even after the merits have been disposed of in favour of the claimants, that the claimant had, in reality, no title to the property; but that the same was the property of a third person, who was not represented by the claimant, or had an adverse interest, or whose rights had been defrauded, it might still be the duty of the Court to retain the property in its own custody, until the true owner might have an opportunity to interpose a claim, and receive it from the Court. But such cases can rarely occur; and are applications to the discretion of the Court, for the furtherance of justice; and, in no shape matters, which the original *promovent* could have a right to require at its hands.

From this review of the practice, as to claims in proceedings *in rem*, it is obvious that the objection now relied on, however apparent it might be from the evidence disclosed upon the record, could not be insisted on as matter of error. In a strict sense, however, this being a writ of error upon an exchequer information tried by a jury, the evidence given at the trial is not properly before us; and as a common law proceeding, the affidavit of Mr. Henner constitutes no part of the record. But, even if that affidavit were admissible, and the objection were now open, it is by no means clear, that it would be available. The property was by the consent of Hall sold and conveyed to Messrs. Hazard & Williams, in trust for himself. If that conveyance was fraudulent as to creditors, it was not absolutely void, and only voidable by them. And, at all events, we cannot but see that they had full authority to interpose this claim, by the consent of the real owner; and the irregularity, if any, prejudices no adverse right, and interferes with no rule of justice.

The judgment of the District Court must therefore be affirmed. But a certificate of probable cause of seizure will be

granted, as such probable cause is not denied to exist, and indeed is apparent from the verdict of the first jury.

This cause came on, &c. on consideration whereof, It is considered and adjudged by this Court, that there is no error in the judgment of the said District Court of Louisiana in the premises, and that the same be and hereby is affirmed. And it is further ordered and adjudged, that there was a reasonable cause of seizure of the wines, and promises set forth, in the information, and that a certificate thereof be entered of record accordingly; and that the cause be remanded with directions to the District Court of Louisiana to make restitution to the claimants. and otherwise proceed in the premises. according to law